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No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

ANSWER TO MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM 1907.

THE UNITED STATES OF AMERICA complainant, *v.* JOHN F. SHIPP AND OTHERS defendants. } No. 5, Original.

ANSWER TO MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY.

The defendants Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, Fred. Frawley and Marion Perkins, appearing by their attorneys Judson Harmon, Robert Pritchard, James J. Lynch, M. H. Clift and Robert B. Cooke; the defendants T. B. Taylor and George Brown, appearing by their attorney T. W. Stanfield; the defendant Jeremiah Gibson appearing by his attorneys Clift & Cooke; the defendant Joseph Clark appearing by his attorneys Spears & Lynch; the defendants Claude Powell, Nick Nolen, Chas. J. Powell, Bart Justice, John Jones, Henry Padgett, William May, John Varnell and Alfred Handman, appearing by their attorneys Lewis Shepherd and Shepherd & Fleming; the defendants "Sheenie" Warner and Luther Williams appearing by their attorney G. W. Chamlee; the defendant William Beeler appearing by his attorneys Ford & Chamlee and G. W. Chamlee; the defendants W. J. Cartwright and R. F. Cartwright appearing by their attorneys S. P. Maddox and John H. Early; the defendant Frank Ward appearing by his attorneys G. W. Chamlee and John A. Hood, and

the defendant William Marquette appearing by his attorney Joe V. Williams, answering the petition of the Solicitor General for leave to take additional testimony in this case say:

1. It is true that much proof has been taken in this case both by the Government and the defendants, and the defendants closed their proof in June, 1907; the report of the Commissioner has been made and the testimony opened, published and filed. It is likewise probably true that the Government made no effort to find additional evidence after the closing of the testimony.

2. These defendants take it for granted that the statement that the Department of Justice has received the information set out in the motion is true. But they call the attention of the Honorable Court to the vague and meagre statements of the motion upon this subject. The names of the two persons who are supposed to have been eye witnesses of "part of the incidents connected with the lynching of the prisoner Ed. Johnson" are not given. The nature of the "part of the incidents" they saw is not stated. The names of the "two defendants" whom it is supposed these witnesses "could identify as connected therewith" are not given.

3. While these defendants submit that they are entitled to be furnished with the names of the two witnesses, they do not insist upon this because the motion suggests that "these two parties did not previously make known their knowledge of these facts in reference to this matter on account of fear." Defendants aver that nothing whatever has occurred, so far as their knowledge or information extends, to

support the suggestion that any concealment of facts has been induced by fear of any sort.

4. But there are many defendants to the information in this case and many of them have separate defenses and the defendants are not all represented by the same counsel. The defense has been onerous and expensive. It is inferrible from the statements of the motion that only two defendants will be interested in the additional testimony sought to be taken. To save the expense of the attendance of all the defendants and the attorneys for all of them, these defendants respectfully submit that they are entitled to be furnished with the names of the two defendants who will be affected by the proposed additional testimony. After the testimony of the two witnesses in question shall have been taken, the defendants affected thereby should have reasonable time within which to collect and adduce evidence in rebuttal.

Defendants therefore offer no resistance to the motion further than to insist that before it is allowed they should be furnished with the names of the two defendants whom it is proposed to identify by the witnesses, and that such additional time be allowed as may be necessary for collecting and adducing rebuttal evidence.

Respectfully submitted,

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